

Court of Appeals, State of Michigan

ORDER

People of MI v Tommy Delanzo Evans

Docket No. 290061

LC No. 07-001937-FH

E. Thomas Fitzgerald
Presiding Judge

Henry William Saad

Elizabeth L. Gleicher
Judges

The Court orders that the motion to file a supplemental brief is GRANTED and the supplemental brief filed with the motion is accepted in support of defendant's delayed application for leave to appeal.

Pursuant to MCR 7.205(D)(2), in lieu of granting defendant's delayed application the Court VACATES that portion of the sentence that ordered defendant to pay attorney fees, and REMANDS this case to the trial court. The trial court erred in ordering defendant to pay attorney fees without first assessing his ability to pay. *People v Dunbar*, 264 Mich App 240, 252-256; 690 NW2d 476 (2004). On remand, the trial court shall address defendant's current and future financial circumstances and foreseeable ability to reimburse the county for attorney fees before determining whether defendant should pay those fees. At the trial court's discretion, the decision may be made based on the record without the need for a formal evidentiary hearing. *Id.* In all other respects the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

The motion to remand is DENIED.

The motion to correct the record is DENIED.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 04 2009
Date

Sandra Schultz Mengel
Chief Clerk